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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/705,337	11/10/2003	Garry Tsaor		5125

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EXAMINER

WALCZAK, DAVID J

ART UNIT PAPER NUMBER

3751

DATE MAILED: 03/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/705,337	Applicant(s) TSAUR, GARRY	
	Examiner David J. Walczak	Art Unit 3751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 11 January 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 15-30 is/are allowed.
- 6) ☒ Claim(s) 1,4,5,8,10,12 and 13 is/are rejected.
- 7) ☒ Claim(s) 2, 3, 6, 7, 9, 11 and 14 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |                                                                                         |                                                                             |
|-----------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____                                                |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____                                                             | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 4, 5, 8, 10, 12 and 13 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Schwartzman in view of Roehrich. In regard to claim 1, Schwartzman discloses a first elongated tubular housing 12 with a sealed end and an open end, a fluid B in the first housing, a second tubular housing 14 with a sealed end 60 and an open end inserted with the sealed end inside of the open end of the first housing and thereby sealing the first fluid within the first housing, a liquid A (see column 3, lines 3-7) in the second housing and opening means 62 located near the sealed end of the second housing and positioned within the first housing to allow the fluid to commingle with the liquid wherein after the opening means is open, the fluid and liquid will commingle. Although the Schwartzman reference does not disclose that the first housing 12 may be squeezed to expel the fluids, attention is directed to the Roehrich reference, which discloses another applicator having a valved head wherein the container may be squeezed in order to accelerate the dispensing (see column 3, lines 16). Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to employ such a resilient material when manufacturing

the housing 12 of Schwartzman in order to enable a user to accelerate the dispensing. In regard to claim 4, an applicator tip 20 is affixed to the open end of the second tubular housing. In regard to claim 5, the open end of the second housing is sealed (via valve 33) and provided with a second opening means 36 to allow complete sealing of the liquid in the second housing. In regard to claim 8, one of the fluids may be replaced by a power (column 3, lines 3-7). In regard to claim 10, Schwartzman discloses a tubular housing 12, with a sealed end and an open end, a restriction 42 between the sealed and open ends which separates the housing into two sections, a first fluid B in the first section near the sealed end of the housing, a second fluid A in the second section near the open end of the housing, a first opening means 60, 62 disposed at the restriction which seals the first fluid in the housing and a second opening means 33 at the open end of the housing which seals the second fluid in the second section. Although the Schwartzman reference does not disclosed that the housing can be squeezed to expel the fluids, as discussed supra, the housing can obviously be made from such a resilient material which would enable a user to accelerate the dispensing. In regard to claim 12, an applicator tip 20 is affixed near the open end of the housing. In regard to claim 13, as discussed supra, a power may replace one of the fluids.

***Allowable Subject Matter***

Claims 2, 3, 6, 7, 9, 11 and 14 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 15-30 are allowed.

### ***Response to Arguments***

Applicant's arguments filed 1/11/05 have been fully considered but they are not persuasive. The Applicant initially contends that the Schwartzman reference is not applicable since the Applicant's invention does not include much of the structure present in the Schwartzman device (i.e., a valve, plunger, spring). However, the Schwartzman reference discloses the invention as claimed. The fact that it discloses additional structure not claimed is irrelevant. The Applicant further contends that the Schwartzman device does not include a restriction between the ends of the housing. As discussed supra, however, the housing 12 clearly shows a "restriction" 42 between the ends of the housing 12. Since element 42 narrows the chamber in the housing through which fluid flows, it can properly be referred to as a "restriction". Lastly, the Applicant contends that the Schwartzman reference is not applicable since the instant invention includes two openings that are operated independently of each other while the Schwartzman device includes two openings that are operated simultaneously. This feature, however, has not been claimed. As discussed supra, the Schwartzman reference discloses the claimed structure.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David J. Walczak whose telephone number is 571-272-4895. The examiner can normally be reached on Mon-Thurs, 6:30- 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on 571-272-4835. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



David J. Walczak  
Primary Examiner  
Art Unit 3751

DJW